UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

PERSONNEL STAFFING GROUP, LLC D/B/A MOST VALUABLE PERSONNEL, AND MVP WORKFORCE, LLC, A SINGLE EMPLOYER

and **Case 13-CA-149591**

CHICAGO WORKERS' COLLABORATIVE

and **Case 13-CA-149592**

JOSE SOLORZANO, an Individual

and **Case 13-CA-149593**

ISAURA MARTINEZ, an Individual

and **Case 13-CA-149594**

MARCELLA GALLEGOS, an Individual

and **Case 13-CA-149596**

DORA IARA, an Individual

and **Case 13-CA-155513**

ROSA CEJA, an Individual

and **Case 13-CA-162002**

GERALDINE BENSON, an Individual

and **Case 13-CA-162270**

WESTSIDE HEALTH AUTHORITY

GENERAL COUNSEL'S OPPOSITION TO RESPONDENTS' MOTION FOR SUMMARY JUDGEMENT

Pursuant to Rule 102.24 of the Board's Rules and Regulations, Counsel for the General Counsel submits this brief in opposition to Respondent Personnel Staffing Group, LLC d/b/a

Most Valuable Personnel's (Respondent MVP) and MVP Workforce, LLC's (Respondent Workforce; collectively with Respondent MVP, "Respondents") Motion for Summary Judgment. Respondents' motion and memorandum in support ask the Board to grant summary judgment in their favor claiming there are no genuine issues of material fact in dispute.

Respondents make two erroneous arguments in support of its motion for summary judgment. First, Respondents claim that because the Charging Parties never personally served them with copies of the charges, they are barred by Section 10(b) of the NLRA. Second, Respondents claim that Chicago Workers Collaborative and Westside Health Authority are neither employees nor labor organizations and as such are not protected by the NLRA. As demonstrated below, these arguments have no basis in fact or law and the Board should deny Respondents' motion for summary judgment and allow the parties to present their evidence to the administrative law judge to determine the facts and resolve this case expeditiously.

Rule 102.24 of the Board's Rules and Regulations states that all motions for summary judgment shall be filed with the Board no later than 28 days prior to the scheduled hearing. The Board "may deny the motion where the motion itself fails to establish the absence of a genuine issue or where the opposing party's pleadings, opposition and/or response indicate on their face that a genuine issue may exist." Respondents' motion is factually and legally misleading on its face.

I. PROCEDURAL BACKGROUND

On July 29, 2016 the Regional Director for Region 13 issued a Order Consolidating Cases, Consolidated Complaint and Notice of Hearing ("Complaint"). The Complaint alleges that Respondents violated Section 8(a)(1) by: (1) filing and maintaining a state court lawsuit against Charging Party Rosa Ceja on January 15, 2014, in order to retaliate against

her for engaging in activity protected by Section 7 of the Act; (2) issuing interrogatories and requests for documents that impinged on Charging Party Ceja's Section 7 rights; (3) filing and maintaining a state court lawsuit against Charging Parties CWC, Jose Solorzano, Isaura Martinez, Marcella Gallegos, and Dora Iara on October 6, 2014, in order to retaliate against them for engaging in activity protected by Section 7; (4) filing and maintaining a state court lawsuit against Charging Parties WHA and Geraldine Benson for engaging in activity protected by Section 7 of the Act; and (5) refusing to hire Charging Parties Solorzano and Gallegos for engaging in Section 7 activities. The hearing was originally set for July 18, 2016, and is currently set for November 17, 2016.

Respondents filed an Answer and Affirmative Defenses to the Consolidated Complaint on August 11, 2016, and filed the instant Motion for Summary Judgment on October 20, 2016.

A. The CWC-Related Charges are Timely.

Respondents correctly note that some of the allegations in the Complaint arise out of a job fair which Respondents held on September 24, 2014. (See Respondents Brief in Support at page 1) The allegations also arise out of the defamation lawsuit Respondents filed against the Chicago Workers Collaborative on October 6, 2014, as Respondents claim. (See Respondents Brief in Support at page 2) And, as noted by Respondents, several of the initial charges in this case were filed on April 6, 2015, including Cases 13-CA-149591, 13-CA-149592, 13-CA-149593, 13-CA-149594, and 13-CA-149596. (See Respondents Brief in Support at page 2])

However, Respondents also correctly point out in their Brief that the Regional Director served copies of the charges on them by US mail. (See Respondents Brief in Support at page 2. As alleged in the Complaint, the charges were served on April 7, 2015. Respondents then make the claim that somehow the foregoing chronology places the charges outside of the six-month

statute of limitations under Section 10(b). Respondents' first argument appears to be that it must be the *Charging Parties themselves*, not the Region, who effectuate service of the charges on the Respondents. However, Respondents offer no legal support for the argument that somehow the Region serving the charges on them is insufficient. There is no requirement in either Section 10(b) or legal precedent that the charges must come directly from the charging parties to perfect service. In fact, the Board has long accepted that service of the charge by the Region constitutes effective service within the meaning of Section 10(b) of the Act. See *General Marine Transport Corp.*, 238 NLRB 1372, 1375-1376 (1978); *General Motors Corp.*, 237 NLRB 1509, 1517 n. 11 (1978)(" The basic responsibility for the filing and service of charges is that of the charging party. However, where the General Counsel has caused service to be effecutated, such service complies with the Act's requirement.") Respondents were clearly on notice of the charges and were able to respond accordingly. Respondents second argument regarding 10(b) is similarly without merit. Simply put, what Respondents fail to mention in their motion for summary judgment and memorandum in support is that Respondents *maintained* this lawsuit from October 6, 2014, and continued to pursue it until February 25, 2016. Similarly, Respondent *maintained* its lawsuit against the WHA and Benson until February 8, 2016. Thus, the charges filed by the Charging Parties were well within the 10(b) period, and would have been until August 8, 2016. Respondents filed their defamation lawsuit and continued pursing it into 2016, so from their own litigiousness, the charges are plainly timely. Respondents admit maintaining this lawsuit in their Answers. See Respondents Answers to Consolidated Complaint VII(b) and VIII(b). Thus, their own pleadings indicate that Respondents' argument is facially invalid. Additionally, because Charging Parties Solorzano and Gallegos could not have known of the Respondents' refusal to hire them until, at the earliest, the date they were aware of the lawsuit Respondents filed on

October 6, 2014 (and maintained through February 25, 2016) the charges filed by Charging Parties Solorzano, Martinez, Gallegos and Iara are likewise within the 10(b) period. The evidence will show that the individual charging parties were not aware of the lawsuit until, in some cases, well after the lawsuit was filed.

B. The Lawsuits Against the CWC and WHA Violated Employees' Section 7 Rights.

Respondents then claim that the CWC and WHA related allegations fail because neither of them are protected under the National Labor Relations Act. Respondent focuses much of this argument on its claim that CWC and WHA, purportedly, do not meet the definition of a labor organization under Section 2(5) of the Act. Respondents claim the CWC and WHA do not have a pattern or practice of dealing with employers. Notwithstanding the fact that these organizations do in fact have a practice of dealing with employers like the Respondents concerning employees terms and conditions of work, Respondents discussion of whether the CWC and WHA are labor organizations is completely irrelevant to this dispute. See *Northeastern University*, 235 NLRB 858, 865 (1978)(finding that employer violated Act when it denied the use of meeting space to workers' group and holding that it was irrelevant that group was not a labor organization under Section 2(5) because "as employees, members of the [the group] had a protected right to act concertedly as individuals to improve their wages, hours and working conditions.

Respondents' lawsuits against the CWC and WHA restrained and coerced the Section 7 rights of the employees who are members of these organizations. The remedies sought by the Respondents, plainly tend of interfere with the four individual Charging Parties' Section 7 rights to engage in protected concerted activity. For example, the Board found in *J.A. Croson Co.*, 359

NLRB No. 2, slip op. at 8 (2012)[1], that an employer violated the Act by maintaining a preempted state court lawsuit against a competitor employer based on the latter's acceptance of job-targeting funds from a union. In so finding, the Board rejected the employer's defense that the lawsuit did not violate the Act because it named as a defendant only the competitor employer, and not any person protected by Section 7. *Id.* As the Board explained, if the employer's lawsuit prevailed, the result would have been to curtail the job-targeting program, which had resulted from the employees' exercise of their Section 7 rights. In the immediate case, the practical effect of Respondents' lawsuits would be to interfere with the Section 7 rights of individual workers, like the Charging Parties, who have chosen to exercise their rights through and in conjunction with the CWC and WHA. In *Diamond Walnut Growers*, 312 NLRB 61, 69 (1993), the Board found an employer violated Section 8(a)(1) by bringing a baseless libel suit against a union with retaliatory motive and rejecting employer's argument that it could not have violated the Act because it sued only the union, not individual employees. As in that case, it is the Section 7 rights of the employees that are being coerced and restrained.

As will be shown through the evidence presented at trial, members of the CWC and WHA like Jose Solorzano, Isaura Martinez, Marcella Gallegos, Dora Iara, and Geraldine Benson participated in concerted activities organized by those organizations for mutual aid or protection and to "improve their lot as employees through channels outside the immediate employee-employer relationship." *Eastex, Inc. v. NLRB*, 437 U.S. 556, 565 (1978). As the Supreme Court stated in that decision, "labor's cause often is advanced on fronts other than collective bargaining and grievance settlement within the immediate employment context." The allegations in the lawsuits brought by Respondents consistently not only refer to the CWC, but also "its members,

[1] Although this decision was decided by a panel that, under *NLRB v. Noel Canning*, 134 S.Ct. 2550, 2578 (2014), was not properly constituted, it is the General Counsel's position that *J.A. Croson* was soundly reasoned, and the current Board should adopt the *J.A. Croson* rationale as its own.

agents, representatives, employees, and others acting in concert with it." Similarly, Respondents refer to "individuals acting on behalf of Westside Health Authority" when referring to the March 24, 2015, letter that forms the basis of its lawsuit.

Moreover, the Board has long held that the term "employee" is broad enough to include members of the working class generally. *Clark & Hinojosa*, 247 NLRB 710, 715-716 (1980). This broad definition covers, in addition to employees of a particular employer, also employees of another employer, or former employees of a particular employer, or even applicants for employment. See also *Redwood Empire, Inc*., 296 NLRB 369, 391 (1989); *Little Rock Crate & Basket Co*., 227 NLRB 1406 (1977) and *Briggs Mfg. Co*., 75 NLRB 569 (1947). As the Board points out in *Clark & Hinojosa*, supra, "[t]o limit protection against discrimination only to employees of a particular employer, would permit employers to discriminate with impunity against other members of the working class, and would serve as a powerful deterrent against free recourse to Board processes."

In short, Respondents claim that its lawsuits against CWC and WHA are beyond the reach of the Board simply because those entities are not labor organizations under the Act, regardless of whether statutory employees are working with those entities to attempt to better their working conditions, is wholly without merit. Contrary to Respondents apparent understanding of the case, the issue is not whether the CWC and WHA are protected by the Act. The issue is, as with any charge alleging a violation of Section 8(a)(1), is whether, by Respondents conduct, *employees'* Section 7 rights were violated. Thus, Respondents arguments that CWC and WHA are not employees or labor organizations and do not have the protection of the Act, and that Respondents are therefore entitled to summary judgment, must be rejected.

CONCLUSION

Respondent is clearly not entitled to summary judgment as a matter of law. Substantial factual matters must be heard before an administrative law judge before conclusions of law can be made. For these reasons, Counsel for the General Counsel requests Respondent's motion for summary judgment be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

13-CA-149591; 13-CA-149592; 13-CA-149593; 13-CA-149594; 13-CA-149596; 13-CA-155513; 13-CA-162002; 13-CA-162270

The undersigned hereby certifies that true and correct copies of General Counsel's Opposition to Respondent's Motion for Summary Judgment have been e-filed with the Executive Secretary and served this 27th day of October, 2016, in the manner indicated, upon the following parties of record.

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